

24104556D

HOUSE BILL NO. 889

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, 58.1-609.5, 58.1-609.11, 58.1-611.1, 58.1-612, 58.1-623, 58.1-638, 58.1-647, and 58.1-648, relating to sales and use tax on services.

Patron—Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, 58.1-609.5, 58.1-609.11, 58.1-611.1, 58.1-612, 58.1-623, 58.1-638, 58.1-647, and 58.1-648 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-602. Definitions.

As used in this chapter, unless the context clearly shows otherwise:

"Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, short-term rental, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. "Accommodations" does not include rooms or space offered by a person in the business of providing conference rooms, meeting space, or event space if the person does not also offer rooms available for overnight sleeping.

"Accommodations fee" means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than \$0.

"Accommodations intermediary" means any person other than an accommodations provider that (i) facilitates the sale of an accommodation and (ii) either (a) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider.

"Accommodations intermediary" does not include a person:

1. If the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person;

2. Who facilitates the sale of an accommodation if (i) the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodations provider to such person; or

3. Who is licensed as a real estate licensee pursuant to Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of Title 54.1, when acting within the scope of such license.

"Accommodations provider" means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined in this section shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Affiliate" means the same as such term is defined in § 58.1-439.18.

"Amplification, transmission, distribution, and network equipment" means production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing, and retrieving end-user subscribers' requests. A "network" includes modems, fiber optic cables, coaxial cables, radio equipment, routing equipment,

INTRODUCED

HB889

switching equipment, a cable modem termination system, associated software, transmitters, power equipment, storage devices, servers, multiplexers, and antennas, which network is used to provide Internet service, regardless of whether the provider of such service is also a telephone common carrier or whether such network is also used to provide services other than Internet services.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program that is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Digital personal property" means digital products delivered electronically, including software, digital audio and audiovisual products, reading materials, and other data or applications, that the purchaser owns or has the ability to continually access, whether by downloading, streaming, or otherwise accessing the content, without having to pay an additional subscription or usage fee to the seller after paying the initial purchase price.

"Discount room charge" means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

"Distribution" means the transfer or delivery of a *taxable service or* tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of a *taxable service or* tangible personal property by a person that has processed, manufactured, refined, or converted such *taxable service or tangible personal* property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing *taxable* services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or *taxable* services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" does not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to *taxable services or* tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to *taxable services or* tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, "integrated process" does not mean general maintenance or administration.

"Internet" means, collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor to such protocol, to communicate information of all kinds by wire or radio.

"Internet service" means a service that enables users to access content, information, and other services offered over the Internet.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. "Manufacturing" also includes the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination of whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" includes, but is not limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, "modular building" does not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person that owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person that purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of a *taxable service or* tangible personal property not *provided*, held, or used by a seller in the course of an activity for which it is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided that such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, also includes Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of "person" means the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Qualifying locality" means Charlotte County, Gloucester County, Halifax County, Henry County, Mecklenburg County, Northampton County, Patrick County, Pittsylvania County, or the City of Danville.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Remote seller" means any dealer deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 under the criteria specified in subdivision C 10 or 11 of § 58.1-612 or any software provider acting on behalf of such dealer.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of a *taxable service or* tangible personal property ~~or services taxable under this chapter~~, and

182 ~~shall include~~ *includes* any such transaction as the Tax Commissioner upon investigation finds to be in
183 lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this
184 chapter. Any dealer making a sale for resale ~~which that~~ is not in strict compliance with such regulations
185 shall be personally liable for payment of the tax.

186 The terms "retail sale" and a "sale at retail" specifically include the following: (i) the sale or charges
187 for any accommodations furnished to transients for less than 90 continuous days; (ii) sales of tangible
188 personal property to persons for resale when because of the operation of the business, or its very nature,
189 or the lack of a place of business in which to display a certificate of registration, or the lack of a place
190 of business in which to keep records, or the lack of adequate records, or because such persons are
191 minors or transients, or because such persons are engaged in essentially service businesses, or for any
192 other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of
193 policing such business operations; (iii) the separately stated charge made for automotive refinish repair
194 materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the
195 separately stated charge for equipment available for lease or purchase by a provider of satellite television
196 programming to the customer of such programming. Equipment sold to a provider of satellite television
197 programming for subsequent lease or purchase by the customer of such programming shall be deemed a
198 sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or
199 sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible
200 personal property to such persons and may refuse to issue certificates of registration to such persons.
201 The terms "retail sale" and a "sale at retail" also specifically include the separately stated charge made
202 for supplies used during automotive repairs whether or not there is transfer of title or possession of the
203 supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies
204 by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for
205 resale.

206 The term "transient" does not include a purchaser of camping memberships, time-shares,
207 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
208 real estate, however created or sold and whether registered with the Commonwealth or not. Further, a
209 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a
210 specific real estate project on an ongoing basis throughout its term shall not be deemed a transient,
211 provided, however, that the term or time period involved is for seven years or more.

212 The terms "retail sale" and "sale at retail" do not include a transfer of title to tangible personal
213 property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i)
214 at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the
215 transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the
216 purchaser manufactures goods.

217 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,
218 use, consumption, or storage to be used or consumed in the Commonwealth.

219 "Room charge" means the full retail price charged to the customer for the use of the accommodations
220 before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for
221 facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name.
222 The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of
223 the Department on the same.

224 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional
225 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any
226 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal
227 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and
228 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on
229 the premises of the person furnishing, preparing, or serving such tangible personal property. A
230 transaction whereby the possession of property is transferred but the seller retains title as security for the
231 payment of the price shall be deemed a sale.

232 "Sales price" means the total amount for which ~~taxable services or~~ tangible personal property ~~or~~
233 ~~services are~~ is sold, including any *taxable* services that are a part of the sale, valued in money, whether
234 paid in money or otherwise, and includes any amount for which credit is given to the purchaser,
235 consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the
236 property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.
237 "Sales price" does not include (i) any cash discount allowed and taken; (ii) finance charges, carrying
238 charges, service charges or interest from credit extended on sales of tangible personal property under
239 conditional sale contracts or other conditional contracts providing for deferred payments of the purchase
240 price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the
241 purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid
242 by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal,
243 but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the

price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Short-term rental" means the same as such term is defined in § 15.2-983.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Streaming" means a method of transmitting or receiving video and audio data over a computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is being received.

"Tangible personal property" means personal property that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. "Tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities. "Tangible personal property" includes (i) ~~telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and~~ (ii) manufactured signs and (ii) digital personal property.

"Taxable service" means any of the following services used or consumed in the Commonwealth:

- 1. Admissions charged for attendance at any event or place of amusement or entertainment;*
- 2. Charges to use any recreation, fitness, or sports facilities, including membership fees and dues;*
- 3. Nonmedical personal services or counseling, including (i) hair care, nail care, skin care, cosmetology, beauty, tanning, exercise, nutrition, weight control, sensory stimulation, or relaxation services or counseling and (ii) piercing, tattooing, exfoliation, implants, and other cosmetic body modifications. Nonmedical personal services or counseling shall not include surgical procedures or separately billed services that must be performed by or under the direction of a person licensed or certified by a board within the Department of Health Professions, pursuant to Subtitle III (§ 54.1-2400 et seq.) of Title 54.1;*
- 4. Dry cleaning and laundry services, and garment and shoe repairs and alterations;*
- 5. Companion animal care, including grooming, boarding, walking, training, and feeding. Companion animal care shall not include veterinary medical procedures or separately billed services that must be performed by or under the direction of a person licensed or certified by the Board of Veterinary Medicine pursuant to Chapter 38 (§ 54.1-3800 et seq.) of Title 54.1;*
- 6. Residential home repair or maintenance, including carpentry, painting, plumbing, electrical, and HVAC, when the work performed does not require a state or local permit and is paid for directly by a resident or homeowner;*
- 7. Residential landscaping services, including landscaping design and maintenance, lawn services, or tree removal, when paid for directly by a resident or homeowner;*
- 8. Residential cleaning services, including housekeeping, rug cleaning, upholstery cleaning and dyeing, window cleaning, power washing, and servicing of swimming pools, when paid for directly by a resident or homeowner;*
- 9. Vehicle and engine repair, maintenance, cleaning, painting, and remodeling;*
- 10. Repairs or alterations to tangible personal property or the functioning thereof, including appliances, electronics, computers, jewelry, watches, musical instruments, and art;*
- 11. Delivery or shipping services, including wrapping and packing;*
- 12. Storage of tangible personal property, including climate-controlled storage and self-storage;*
- 13. Travel, event, and aesthetic planning services that are separately billed from the sale of product, including travel agents, event planning, catering, and interior design services; and*
- 14. Communications services that are not subject to the tax imposed pursuant to Chapter 6.2 (§ 58.1-645 et seq.) and are not digital personal property. For purposes of this subdivision,*

305 *"communications services" means the same as that term is defined in § 58.1-647.*

306 *"Taxable service" does not include any service otherwise exempt under this chapter.*

307 "Use" means the exercise of any right or power over tangible personal property incident to the
308 ownership thereof, except that it does not include the sale at retail of that property in the regular course
309 of business. "Use" does not include the exercise of any right or power, including use, distribution, or
310 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the
311 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the
312 Commonwealth via mail or telephone. "Use" does not include any sale determined to be a gift
313 transaction, subject to tax under § 58.1-604.6.

314 "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as defined in
315 this section.

316 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to
317 those activities that are an integral part of the production of a product, including all steps of an
318 integrated manufacturing or mining process, but not including ancillary activities such as general
319 maintenance or administration. When used in relation to mining, "used directly" refers to the activities
320 specified in this definition and, in addition, any reclamation activity of the land previously mined by the
321 mining company required by state or federal law.

322 "Video programmer" means a person that provides video programming to end-user subscribers.

323 "Video programming" means video and/or information programming provided by or generally
324 considered comparable to programming provided by a cable operator, including, but not limited to,
325 Internet service.

326 **§ 58.1-603. (Contingent expiration date) Imposition of sales tax.**

327 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now
328 imposed by law, a license or privilege tax upon every person who engages in the business of selling at
329 retail ~~or, distributing, leasing, renting, or furnishing taxable services or~~ tangible personal property in this
330 Commonwealth; ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or
331 who stores for use or consumption in this Commonwealth any item or article of tangible personal
332 property as defined in this chapter, ~~or who leases or rents such property within this Commonwealth,~~ in
333 the amount of 4.3 percent:

334 1. Of the gross sales price of each *taxable service or* item or article of tangible personal property
335 when sold at retail ~~or, distributed, or furnished~~ in this Commonwealth.

336 2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the
337 lease or rental of such property is an established business, or part of an established business, or the
338 same is incidental or germane to such business.

339 3. Of the cost price of each item or article of tangible personal property stored in this
340 Commonwealth for use or consumption in this Commonwealth.

341 4. Of the gross proceeds derived from the sale or charges for accommodations furnished to transients
342 as set out in the definition of "retail sale" in § 58.1-602.

343 ~~5. Of the gross sales of any services that are expressly stated as taxable within this chapter.~~

344 **§ 58.1-603. (Contingent effective date) Imposition of sales tax.**

345 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now
346 imposed by law, a license or privilege tax upon every person who engages in the business of selling at
347 retail ~~or, distributing, leasing, renting, or furnishing taxable services or~~ tangible personal property in this
348 Commonwealth; ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or
349 who stores for use or consumption in this Commonwealth any item or article of tangible personal
350 property as defined in this chapter; ~~or who leases or rents such property within this Commonwealth,~~ in
351 the amount of ~~three and one-half~~ 3.5 percent through midnight on July 31, 2004, and four percent
352 beginning on and after August 1, 2004:

353 1. Of the gross sales price of each *taxable service or* item or article of tangible personal property
354 when sold at retail ~~or, distributed, or furnished~~ in this Commonwealth.

355 2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the
356 lease or rental of such property is an established business, or part of an established business, or the
357 same is incidental or germane to such business.

358 3. Of the cost price of each item or article of tangible personal property stored in this
359 Commonwealth for use or consumption in this Commonwealth.

360 4. Of the gross proceeds derived from the sale or charges for accommodations furnished to transients
361 as set out in the definition of "retail sale" in § 58.1-602.

362 ~~5. Of the gross sales of any services which are expressly stated as taxable within this chapter.~~

363 **§ 58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and**
364 **cities.**

365 A. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed
366 in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et

seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail sales tax at the rate of 0.70 percent. In no case shall an additional sales tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B ~~shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case of Planning District 15, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3701. For additional planning districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-603.1. (Contingent effective date) Additional state sales tax in certain counties and cities.

In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. ~~Such tax shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-603.2. (For contingent expiration date, see Acts 2018, c. 850) Additional state sales and use tax in certain counties and cities of historic significance; Historic Triangle Marketing Fund.

A. For purposes of this section:

"Historic Triangle" means all of the City of Williamsburg and the Counties of James City and York.

"Historic Triangle Recreational Facilities Authority" means a regional government entity created by the City of Williamsburg and the Counties of James City and York for the purpose of developing and managing recreational facilities for the benefit of such localities' residents and visitors.

B. In addition to the sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1, there is hereby levied and imposed in the Historic Triangle a retail sales tax at the rate of one percent. ~~Such tax shall not be levied upon food purchased for human consumption and essential personal hygiene products, as~~

428 such terms are defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed
429 pursuant to §§ 58.1-603 and 58.1-603.1 in each such county and city and shall be subject to all the
430 provisions of this chapter and the rules and regulations published with respect thereto. No discount
431 under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered
432 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
433 provided for the state sales tax under § 58.1-603.

434 C. In addition to the use tax imposed pursuant to §§ 58.1-604 and 58.1-604.01, there is hereby levied
435 and imposed in the Historic Triangle a retail use tax at the rate of one percent. ~~Such tax shall not be~~
436 ~~levied upon food purchased for human consumption and essential personal hygiene products, as such~~
437 ~~terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state use tax imposed
438 pursuant to §§ 58.1-604 and 58.1-604.01 in each such county and city and shall be subject to all the
439 provisions of this chapter and the rules and regulations published with respect thereto. No discount
440 under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered
441 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
442 provided for the state use tax under § 58.1-604.

443 D. The revenue generated and collected pursuant to the tax authorized under this section, less the
444 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller as follows:

445 1. Fifty percent of the revenues shall be deposited into the Historic Triangle Marketing Fund created
446 pursuant to subsection F and used for the purposes set forth therein; and

447 2. Fifty percent of the revenues shall be deposited into a special fund hereby created on the books of
448 the Comptroller under the name "Collections of Historic Triangle Sales Tax" and distributed to the
449 locality in which the sales or use tax was collected. The revenues received by a locality pursuant to this
450 subsection shall not be used to reduce the funding dedicated by the recipient localities to regional
451 tourism promotion and product development.

452 E. 1. The revenues received by a locality pursuant to subsection D shall not be used to reduce such
453 locality's funding dedicated to regional tourism promotion and product development. In meeting the
454 requirements of this subsection, each locality shall annually allocate the following minimum amounts, to
455 be distributed as provided in subdivision 2:

- 456 a. The City of Williamsburg shall allocate at least \$800,000;
457 b. James City County shall allocate at least \$740,000; and
458 c. York County shall allocate at least \$438,600.

459 2. As determined by agreement among the City of Williamsburg and the Counties of James City and
460 York, the amounts allocated under subdivision 1 shall be appropriated so that each of the recipients
461 identified in this subdivision receive the following minimum amounts:

- 462 a. The Williamsburg Tourism Council shall receive at least \$126,600;
463 b. The Greater Williamsburg Chamber of Commerce shall receive at least \$402,000; and
464 c. The Historic Triangle Recreational Facilities Authority shall receive at least \$1,450,000.

465 F. 1. There is hereby created in the state treasury a special nonreverting fund to be known as the
466 Historic Triangle Marketing Fund, referred to in this section as "the Fund," to be managed and
467 administered by the Williamsburg Tourism Council. The Fund shall be established on the books of the
468 Comptroller. All revenues generated pursuant to this section shall be paid into the state treasury and
469 credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to
470 it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not
471 revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the
472 purposes of marketing, advertising, and promoting the Historic Triangle area as an overnight tourism
473 destination, with the intent to attract visitors from a sufficient distance so as to require an overnight stay
474 of at least one night, as set forth in this subsection. Expenditures and disbursements from the Fund shall
475 be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by
476 the Secretary of Finance.

477 2. The Williamsburg Tourism Council (the Council) is established as an advisory board in the
478 legislative branch of state government. The Council shall consist of members as follows: one member of
479 the James City County Board of Supervisors, one member of the York County Board of Supervisors;
480 one member of the Williamsburg City Council, one representative of the Colonial Williamsburg
481 Foundation, one representative of the Jamestown-Yorktown Foundation, one representative of Busch
482 Gardens Williamsburg, one representative of the Jamestown Rediscovery Foundation, one representative
483 of the Williamsburg Hotel and Motel Association, and one representative of the Williamsburg Area
484 Restaurant Association. The Chair of the Greater Williamsburg Chamber of Commerce and the Chief
485 Executive Officer of the Virginia Tourism Corporation shall serve as ex officio, nonvoting members of
486 the Council.

487 3. The Council shall establish the Historic Triangle Office of Marketing and Promotion (the Office)
488 to administer a program of marketing, advertising, and promotion to attract visitors to the Historic
489 Triangle area, as required by this subsection. The Council shall use moneys in the Fund to fund the pay

for necessary expenses of the Office and to fund the activities of the Office. The Office shall be overseen by a professional with extensive experience in marketing or advertising and in the tourism industry. The Office shall be responsible for (i) developing and implementing, in consultation with the Council, long-term and short-term strategic plans for advertising and promoting the numerous facilities, venues, and attractions devoted to education, historic preservation, amusement, entertainment, and dining in the Historic Triangle as a cohesive and unified travel destination for local, national, and international travelers; (ii) assisting, upon request, with the coordination of cross-advertising and cross-marketing efforts between various tourism venues and destinations in the Historic Triangle region; (iii) identifying strategies for both increasing the number of overnight visitors to the region and increasing the average length of stay of tourists in the region; and (iv) performing any other function related to the promotion of the Historic Triangle region as may be identified by the Council.

4. The Council shall report annually on its long-term and short-term strategic plans and the implementation of such plans; marketing efforts; metrics regarding tourism in the Historic Triangle region; use of the funds in the Fund; and any other details relevant to the work of the Council and the Office. Such report shall be delivered no later than December 1 of each year to the managers or chief executive officers of the City of Williamsburg and the Counties of James City and York, and to the Chairmen of the House Committees on Finance and Appropriations and the Senate Committee on Finance and Appropriations.

§ 58.1-604.01. (For contingent expiration dates, see Acts 2013, c. 766, and Acts 2020, c. 1235) Additional state use tax in certain counties and cities.

A. In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail use tax at the rate of 0.70 percent. In no case shall an additional use tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case of Planning District 15, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3701. For any additional planning districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-604.01. (For contingent effective date, see Acts 2020, c. 1235; for contingent expiration date, see Acts 2013, c. 766) Additional state use tax in certain counties and cities.

In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human

consumption and essential personal hygiene products, as such terms are defined in ~~§ 58.1-611.1~~. Such tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For any additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-605.1. Additional local sales tax in certain localities; use of revenues for construction or renovation of schools.

A. 1. In addition to the sales tax authorized under § 58.1-605, a qualifying locality may levy a general retail sales tax at a rate not to exceed one percent as determined by its governing body to provide revenue solely for capital projects for the construction or renovation of schools in each such locality. Such tax shall be added to the rates of the state and local sales tax imposed by this chapter and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on this local sales tax.

2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any resolution passed pursuant to the provisions of subdivision B 1. Such expiration date shall not be more than 20 years after the date of the resolution passed pursuant to the provisions of subdivision B 1.

B. 1. This tax may be levied only if the tax is approved in a referendum within the qualifying locality held in accordance with § 24.2-684 and initiated by a resolution of the local governing body. Such resolution shall state (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, a specified date on which the sales tax shall expire.

2. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the qualifying locality once a week for three consecutive weeks prior to the election. The question on the ballot for the referendum shall include language stating (i) that the revenues from the sales tax shall be used solely for capital projects for the construction or renovation of schools and (ii) the date on which the sales tax shall expire.

C. The governing body of the qualifying locality, if it elects to impose a local sales tax under this section after approval at a referendum as provided in subsection B shall do so by the adoption of an ordinance stating its purpose and referring to this section and providing that such ordinance shall be effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the date on which the sales tax shall expire. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same exemptions and penalties as provided for the state sales tax; ~~however, the local sales tax levied under this section shall not be levied on food purchased for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund that is hereby created on the Comptroller's books for each qualifying locality under the name "Collections of Additional Local Sales Taxes in _____ (INSERT NAME OF THE QUALIFYING LOCALITY)." Each fund shall be administered as provided in § 58.1-605. A separate fund shall be created for each qualifying locality. Only local sales tax moneys collected in that qualifying locality shall be deposited in that locality's fund.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the State Treasurer in the proper amount in favor of each qualifying locality, and such payments shall be charged to the account of the qualifying locality under its special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payment for each of the next two

months. In addition, the payment shall include a refund of amounts erroneously not paid to each qualifying locality and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. The revenues from this tax shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-606.1. Additional local use tax in certain localities; use of revenues for construction or renovation of schools.

A. 1. The governing body of a qualifying locality may levy a use tax at the rate of such sales tax under § 58.1-605.1 to provide revenue for capital projects for the construction or renovation of schools in such locality. Such tax shall be added to the rates of the state and local use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any resolution passed pursuant to the provisions of subsection B. Such expiration date shall not be more than 20 years after the date of the resolution passed pursuant to the provisions of subsection B.

B. The governing body of the qualifying locality, if it elects to impose a local use tax under this section may do so only if it has previously imposed the local sales tax authorized by § 58.1-605.1, by the adoption of an ordinance stating its purpose and referring to this section and providing that the local use tax shall become effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the date on which the use tax shall expire. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same exemptions and penalties as provided for the state use tax; ~~however, the local use tax levied under this section shall not be levied on food purchased for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the locality of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the locality of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased outside the Commonwealth for use or consumption within the locality imposing the local use tax, or stored within the locality for use or consumption, where the property would have been subject to the sales tax if it had been purchased within the Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is outside the Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to the Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into the Commonwealth by counties and cities so as to show the county or city of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular county or city, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any county or city.

F. Local use tax revenue shall be deposited in the special fund established pursuant to subsection E of § 58.1-605.1. The Comptroller shall distribute the revenue to the qualifying locality.

G. All revenue from this local use tax revenue shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-609.5. Service exemptions.

The tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to the following:

1. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made; services rendered by repairmen for which a separate charge is made; and services not involving an exchange of tangible personal property which provide access to or use of the Internet and any other related electronic communication service, including

software, data, content and other information services delivered electronically via the Internet.

2. An amount separately charged for labor or services rendered in installing, applying, remodeling, or repairing property sold or rented Health care services. For purposes of this section, "health care services" means services that must be provided by or under the direction of persons who must be licensed or certified by a board within the Department of Health Professions pursuant to Subtitle III (§ 54.1-2400 et seq.) of Title 54.1.

2. Professional services, including education or training, legal, financial, accounting and tax preparation, real estate, engineering, architectural, or insurance services.

3. Services performed by a person who does not receive more than \$2,500 per year in gross receipts for performance of such services.

4. Services that provide Internet access service as that term is defined in § 58.1-647.

5. Transportation charges separately stated.

4. Separately stated charges for alterations to apparel, clothing and garments.

5. 6. Charges for gift wrapping services performed by a nonprofit organization.

6. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602.

7. Custom programs as defined in § 58.1-602.

8. An amount separately charged for labor rendered in connection with diagnostic work for automotive repair and emergency roadside service for motor vehicles, as defined by § 46.2-100, regardless of whether there is a sale of a repair or replacement part or a shop supply charge.

9. 7. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration.

10. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision 1 above.

8. Residential cleaning, home repair or maintenance, or landscaping services that are purchased by a homeowners' association or similar entity or by a landlord for the benefit of his tenant.

§ 58.1-609.11. Exemptions for nonprofit entities.

A. For purposes of this section, "nonprofit organization" or "nonprofit entity" means an entity that meets the requirements of subsection D. "Nonprofit organization" or "nonprofit entity" includes a single member limited liability company whose sole member is a nonprofit organization.

B. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection G, each entity must follow the procedures set forth in subsection C and meet the criteria set forth in subsection D. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection C and meets the criteria set forth in subsection D. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection C and meets the criteria set forth in subsection D.

C. 1. On and after July 1, 2004, in addition to the organizations described in subsection B, and except as restricted in subdivision 2, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of *taxable services* or tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an

appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

2. If the entity that is exempt under this section is exempt from federal income tax under § 501(c)(19) of the Internal Revenue Code, or has annual gross receipts of less than \$5,000 and is organized for at least one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code, then the exemption under this section for such entity shall not apply to purchases of *taxable services or* tangible personal property that are used primarily (i) for social and recreational activities for members or (ii) for providing insurance benefits to members or members' dependents.

D. To qualify for the exemption under subsection C, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue Code; (ii) under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (iii) under § 501(c)(19) of the Internal Revenue Code; or

b. The entity has annual gross receipts of less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501(c)(3) of the Internal Revenue Code, one of the charitable purposes set forth in § 501(c)(4) of the Internal Revenue Code, or one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws and, where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was at least \$750,000 in the previous year, then the entity must provide a financial review performed by an independent certified public accountant. However, for any entity with gross annual revenue of at least \$1 million in the previous year, the Department may require that the entity provide a financial audit performed by an independent certified public accountant. If the Department specifically requires an entity with gross annual revenue of at least \$1 million in the previous year to provide a financial audit performed by an independent certified public accountant, then the entity shall provide such audit in order to qualify for the exemption under this section, which audit shall be in lieu of the financial review; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

E. On and after July 1, 2004, in addition to the criteria set forth in subsection D, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

F. Any entity that is determined under subsections C, D, and E by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

G. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection D shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

H. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

§ 58.1-611.1. Exemption for food purchased for human consumption and essential personal hygiene products.

797 A. Before January 1, 2023, the tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for
798 human consumption and essential personal hygiene products shall be one and one-half percent of the
799 gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax
800 at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii)
801 the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C,
802 and D of § 58.1-638.

803 B. 1. On and after January 1, 2023, *but before July 1, 2024*, and except for taxes imposed pursuant
804 to §§ 58.1-605 and 58.1-606, no tax shall be imposed under this chapter, or pursuant to any authority
805 granted under this chapter, on food purchased for human consumption or essential personal hygiene
806 products.

807 2. *On and after July 1, 2024, no tax shall be imposed under this chapter, or pursuant to any*
808 *authority granted under this chapter, on food purchased for human consumption or essential personal*
809 *hygiene products.*

810 C. Beginning February 1, 2023, an amount equal to the revenue that would have been distributed
811 pursuant to clause (ii) of subsection A shall be distributed as provided in subsections B, C, and D of
812 § 58.1-638 based on the estimates of the population of cities and counties ages five to 19.

813 D. 1. As used in this section, "food purchased for human consumption" has the same meaning as
814 "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations
815 adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human
816 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
817 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
818 such retail establishment for immediate consumption on or off the premises of the retail establishment
819 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
820 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
821 of that retail establishment. For purposes of this section, "retail establishment" means each place of
822 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
823 certificate of registration pursuant to § 58.1-613.

824 2. As used in this section, "essential personal hygiene products" means (i) nondurable incontinence
825 products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and
826 pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual
827 flow. "Essential personal hygiene products" does not include any item that is otherwise exempt pursuant
828 to this chapter.

829 **§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.**

830 A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons that are dealers,
831 as defined in this section, and that have sufficient contact with the Commonwealth to qualify under (i)
832 subsections B and C or (ii) subsections B and D.

833 B. As used in this chapter, "dealer" includes every person that:

834 1. Manufactures or produces *taxable services or* tangible personal property for sale at retail, for use,
835 consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

836 2. Imports or causes to be imported into this Commonwealth *taxable services or* tangible personal
837 property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for
838 storage to be used or consumed in this Commonwealth;

839 3. Sells at retail, or that offers for sale at retail, or that has in its possession for sale at retail, or for
840 use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, *taxable*
841 *services or* tangible personal property;

842 4. Has sold at retail, used, consumed, distributed, *furnished*, or stored for use or consumption in this
843 Commonwealth, *taxable services or* tangible personal property and that cannot prove that the tax levied
844 by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such
845 *taxable services or* tangible personal property;

846 5. Leases or rents tangible personal property for a consideration, permitting the use or possession of
847 such property without transferring title thereto;

848 6. Is the lessee or rentee of tangible personal property and that pays to the owner of such property a
849 consideration for the use or possession of such property without acquiring title thereto;

850 7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts
851 orders from persons in this Commonwealth for future delivery and whose principal refuses to register as
852 a dealer under § 58.1-613; or

853 8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter,
854 whether it holds, or is required to hold, a certificate of registration under § 58.1-613.

855 C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require
856 registration under § 58.1-613 if it:

857 1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office,
858 warehouse, or place of business of any nature;

2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;

6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;

7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;

8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § 58.1-613;

9. Owns tangible personal property that is for sale located in this Commonwealth, or that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth;

10. Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, from retail sales in the Commonwealth in the previous or current calendar year, provided that in determining the amount of a dealer's gross revenues, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated; or

11. Engages in 200 or more separate retail sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year, provided that in determining the total number of a dealer's retail sales transactions, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated.

D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person that has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § 58.1-613:

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;

2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;

3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and

4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained in this chapter other than in subsection E shall limit any authority that this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer that regularly or systematically solicits sales within this

Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates.

A. All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, or distribution, of *taxable services or tangible personal property or the lease*, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter. However, the sale or distribution of cigarettes shall be subject to the provisions of § 58.1-623.2 and require a cigarette exemption certificate issued pursuant to § 58.1-623.2.

B. The certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the *taxable service or tangible personal property* sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

C. If a taxpayer who gives a certificate under this section makes any use of the *taxable service or tangible personal property* other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property or service to him shall be deemed the sales price of such retail sale. If the sole use of the property or service other than retention, demonstration, or display in the regular course of business is the rental of the property or service while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property or service to him.

D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to the date the taxpayer makes a complete refund claim with the Department. This subsection shall not apply to transactions exempted under self-executing certificates of exemption not issued to a specific taxpayer by the Department.

§ 58.1-638. Disposition of state sales and use tax revenue.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Commonwealth Transportation Fund established pursuant to § 33.2-1524. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the

Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date) Beginning July 1, 2020, of the remaining sales and use tax revenue, an amount equal to 20 percent of the revenue generated by a one-half percent sales and use tax, such as that paid to the Commonwealth Transportation Fund as provided in subsection A, shall be paid to the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

The Commonwealth Transportation Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date)

1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2509.

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2600.

3. (For contingent expiration date, see Acts 2020, c. 1235) The additional revenue generated by increases in the state sales and use tax from Planning District 15 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-3701.

4. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited into special funds that shall be established by appropriate legislation.

5. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. (For contingent expiration date, see Acts 2018, c. 850) The additional revenue generated by increases in the state sales and use tax from the Historic Triangle pursuant to § 58.1-603.2 shall be deposited by the Comptroller as follows: (i) 50 percent shall be deposited into the Historic Triangle Marketing Fund established pursuant to subsection F of § 58.1-603.2; and (ii) 50 percent shall be deposited in the special fund created pursuant to subdivision D 2 of § 58.1-603.2 and distributed to the localities in which the revenues were collected. The net revenues distributable under this subsection shall be computed as an estimate of the net revenues to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

J. *The revenues generated by the imposition of sales and use taxes on taxable services and digital personal property, as defined in § 58.1-602, pursuant to legislation enacted by the 2024 Regular Session of the General Assembly shall be allocated in the same manner prescribed for all other state sales and use tax revenue by subsections A through I of this section. However, revenues that are allocated to the general fund, and not specifically distributed as described in subsections A through I, shall be distributed to localities as follows: (i) 60 percent of such revenues shall be distributed to localities on the basis of school-age population as described in subsections C and D and (ii) 40 percent of such revenues shall be distributed to localities on the basis of high-need student population. Revenues distributed pursuant to clause (ii) shall be distributed in the same manner as provided in subsections C and D, mutatis mutandis. For purposes of this section, "high-need student population" means the number of students in a locality who are (a) identified students, as defined in 42 U.S.C. § 1759a or any successor provision; (b) participants in a program of special education established pursuant to Article 2 (§ 22.1-213 et seq.) of Chapter 13 of Title 22.1; or (c) English language learners.*

K. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

~~K.~~ L. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Commonwealth Transportation Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-647. Definitions.

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title (§ 58.1-600 et seq.), unless defined otherwise, as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. § 522 (20) or (ii) other programming service, and subscriber interaction, if any,

which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332 ~~(d)~~ 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303 ~~(v)~~ 303(v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, *and any other service utilizing any communications infrastructure, including international calling services, extended call area services, and Internet application-based services,* to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. ~~The term "communications services"~~ includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; ~~and~~ (vi) directory assistance; (vii) *prepaid calling services; and (viii) digital subscription services. With the exception of digital subscription services, "communications services" applies to any service described or listed in this definition, regardless of whether the customer is billed for such service on the basis of a subscription charge, a periodic charge, or a charge for actual usage, including such a fee for the use of an Internet-based application, excluding the original cost of purchasing the application.*

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Digital subscription service" means a service, including audio and visual streaming services, which for a fee allows the user to access and use software, reading materials, or other digital data or applications for a defined period of time, and which products the user does not own or have permanent access to outside of such period of time.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Postpaid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, ~~and that is sold in predetermined units or dollars that decrease in number with use.~~

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among

channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications services provider for the sale of the right or privilege of using communications services in the Commonwealth, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

"Service address" means, (i) the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the signal of the telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If the location is not known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of primary use.

"Streaming service" means a method of transmitting or receiving video and audio data over a computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is being received.

§ 58.1-648. Imposition of sales tax; exemptions.

A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of ~~5%~~ *five percent* of the sales price of each communications service that is sourced to the Commonwealth in accordance with § 58.1-649.

B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) ~~sale or recharge of a prepaid calling service;~~ (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99; ~~(vi)~~ (v) a communications services provider's internal use of communications services in connection with its business of providing communications services; ~~(vii)~~ (vi) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; ~~(viii)~~ (vii) sales for resale; ~~(ix)~~ (viii) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government; and ~~(x)~~ (ix) charges for communications services to any customers on any federal military bases or installations when a franchise fee or similar fee for access is payable to the federal government, or any agency or instrumentality thereof, with respect to the same communications services.

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable ~~e-mail~~ *email* or instant messaging; (viii) digital products delivered electronically *that are not digital subscription services, such as including* software, downloaded music, ~~ring tones~~ *ringtones*, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.